IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1368 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NEW INDIA ASSURANCE CO.LTD.

Versus

LAXMIBEN BHAGWANBHAI MACHHI

Appearance:

MR SUNIL B PARIKH for appellant.

MR DR BHATT for Respondents.

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE K.A.PUJ

Date of decision: 22/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

The appellant, New India Assurance Company Ltd., by filing this appeal under Section 110-D of the Motor Vehicles Act, 1939 [to be referred as "the Act" for short], has challenged the judgment and award dated October 10, 1984, passed by the Motor Accident Claims Tribunal, Valsad at Navsari in Motor Accident Claims Petition No. 46 of 1983 by which Award the Tribunal passed an award in favour of the respondent-claimants by holding that the original-driver-cum-owner of offending vehicle, i.e., Tempo bearing Registration No. G.T.O. 1448 along with the appellant Insurance Company was liable to pay the compensation of Rs. 96,500/= with proportionate costs and interest at the rate of 6 per cent p.a. from July 14, 1982 till realisation.

2. On May 5, 1982, deceased Bhagwanbhai along with his minor daughter Asha was travelling on his motorcycle proceedings towards Machhivad from Fansa, when Tempo bearing Registration No. GTO-1448 driven by the respondent No.7 came from the opposite direction and dashed with the motorcycle. The said Tempo was driven by the driver-cum-owner in a rash and negligent manner so as to endanger the human life. Due to dash by the Tempo the deceased and his minor daughter Asha were thrown from the motorcycle. The deceased has sustained serious injuries and was admitted in the hospital and expired on the next day. The widow of the deceased along with 5 minor daughters filed Claim Petition before the Motor Accident Claims Tribunal, Valsad at Navsari claiming compensation of Rs. 1,50,000/= from the driver-cum-owner of Tempo bearing No. GTO-1448 and the appellant Insurance Company with whom the said vehicle was insured.

3. The appellant Insurance Company contested the Claim Petition by filing its Reply at Exhibit 24, inter alia, contending that the driver-cum-owner of the Tempo was not at all responsible for causing the accident but it was the deceased who was rash and negligent in driving his motorcycle. Alternatively, it was pleaded that the negligence of the deceased should be apportioned at 80%. It was further contended by the appellant Insurance Company that the limit of the liability of the Insurance Company under the policy was limited to Rs. 50,000/=.

4. The Tribunal, on the basis of the rival contentions of the parties, framed Issues at Exhibit 19. The Tribunal, after appreciating the oral as well as documentary evidence, awarded compensation in the sum of

Rs. 96,500/= to be recovered jointly and severally from the driver-cum-owner of the Tempo as well as the appellant Insurance Company, which has given rise to filing of this appeal by the Insurance Company. The learned counsel for the appellant Insurance Company has submitted that the Tribunal ought to have held that deceased had contributed in causing the accident in question. In our opinion, this contention cannot be permitted to be raised, for the appellant Insurance Company had not opted under Section 110-C 2-A of the Act.

5. The learned counsel for the appellant, Mr. Sunil B. Parikh then contended that the policy of insurance, Exhibit 41 makes it abundantly clear that the liability of the Insurance Company in respect of third party was limited to Rs. 50,000/=. He submitted that though the policy was comprehensive but the liability of the Insurance Company was limited to Rs. 50,000/= and therefore the Tribunal erred in holding that the whole amount was liable to be paid by the driver-cum-owner of the Tempo and the Insurance Company. The learned counsel for the appellant, in support of his contention, has placed reliance on the decision of the Larger Bench of the Apex Court in New India Assurance Company Ltd. Vs. C.M. Jaya & Others, reported in AIR 2002 S.C. 651. The Supreme Court, in this decision, has ruled that if any additional or higher premium was not paid to cover unlimited or higher liability than the statutory liability fixed as found in the term of the policy, the Insurance Company cannot be permitted to pay over and above the limited liability under the policy. In this case, perusing the policy and Exh. 41, it becomes abundantly clear that no additional premium or risk was covered exceeding the limited liability over Rs. 50,000/= in respect of claim of the third party. In view of the pronouncement of the Supreme Court in C.M. Jaya's case (Supra), we hold that the liability of the Insurance Company to pay the compensation is limited to Rs. 50,000/=. The respondent-claimants shall be entitled to recover the rest of the amount from the driver-cum-owner of the Tempo bearing registration No. GTO 1448. The award with the costs and interest, being eminently just and proper, is hereby confirmed. This Appeal is accordingly partly allowed and it is hereby held that the liability of the Insurance Company to pay compensation to the respondent-claimants is limited to Rs. 50,000/=. The Award of the Tribunal is modified to the above extent accordingly with no order as to costs.

[M.H. Kadri, J.]

rmr. [K.A. Puj, J.]